REMARKS

Upon entry of this amendment, claims 1-3, 5-16, and 19-26 remain pending in the application. By this paper, claims 1, 5, and 13-14 have been amended; claims 4 and 17-18 have been canceled; and claims 27-37 have been added. New claims 27-37 have been added to claim additional disclosed, but unclaimed embodiments. No new matter is added by these amendments and claims.

Reconsideration and allowance of the application in light of the amendments and arguments herein is respectfully requested.

35 U.S.C. § 102(b) Rejections

Claims 1-3, 5-8, 11-16, 18-21, and 24-26 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,948,061 ("Merriman"). The Applicants respectfully submit that Merriman does not anticipate these claims, as amended, because Merriman fails to teach each and every element of the claims.

Claim 1, as amended and in part, recites:

> determining, from within a client computer of an individual user, whether or not the evaluation of the assumed frequencies warrants the delivery of alternate content;
>
> updating data stored in a communications network storage device to aid in determinations of whether the alternate content should be shown, wherein the data used in determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of alternate content is stored in a web browser of the client computer.

The Office Action cites to Merriman, column 6, line 12 through column 7, line 14 for disclosing "determining, from within a client computer of an individual user, whether or not the evaluation of the assumed frequencies warrants the delivery of alternate content" and for disclosing "updating data stored in a communications network storage device to aid in determinations of whether the alternate content should be shown." Merriman discloses processes that take place exclusively at the ad server. E.g. col. 3, lines 52-63; col. 7, lines 15-31.

For instance, Merriman discloses that cookies may be used for purposes of identifying a user that is clicking on an advertisement. Col. 5, lines 10-49. Merriman also discloses that such identification may take place through look ups of the user's IP address, digital signatures, and certificates. Col. 5, lines 20-36.

Merriman also mentions that the advertising server and management processes may be done on additional computers outside of the one computer platform disclosed therein, col. 9, lines 8-16, which will be addressed below. Merriman, however, fails to teach anywhere that determining whether or not the evaluation of the assumed frequencies warrants the delivery of alternate content is performed "from within a client computer of an individual user."

Making this determination (delivery of alternate content warranted) from a user's client computer provides a distinct advantage because it is done locally, is quicker, cheaper, and more dependable. This is because latency delays of having the determination made somewhere else followed by communicating the determination to the client computer would require more resources, more opportunity for delay and for device failure. For instance, network glitches caused by hardware or software issues may significantly delay or prevent the determination from ever reaching the client computer.

The Office Action cites to Merriman, column 9, lines 5-16, for disclosing "wherein the data used in determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of alternate content is stored in a web browser of the client computer." This passage, however, discloses that the advertising server, the affiliate web site and the advertiser's web site may be located at the same geographic location. That all of these systems of the advertising network may be integrated at one location does not teach that "the data used in determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of alternate content is stored in a web browser of the client computer."

The passage also discloses that the advertising server, reporting, derive profile, and management processes may be implemented on one or more different computers and at different nodes on the network. That these various processes disclosed by Merriman may be performed on different computers or at different network nodes does not teach that "data used in determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of alternate content is stored in a web browser of the client computer." Specifically, the features of claim discussed above are drawn to client-side processing and client-side storing of data such as cookie data, etc., that tracks how often a user is exposed to an advertisement, for instance.

The Applicants teach as one of the main embodiments that delivering alternate content may use a client-side programming approach. See Method (B), pages 8-11. As discussed above, Merriman discloses exclusively the use of an ad server computer platform to perform the determination of delivering alternate content. That the computer platform may be broken up to be somewhat distributed does not teach that determining whether or not the evaluation of the assumed frequencies warrants the delivery of alternate content is performed "from within a client computer of an individual user," and that data relied on "is stored in a web browser of the client computer." From within the context of Merriman, column 9, lines 5-16 should only be construed to mean that the ad server computer platform may have a distribution that performs one or more of the processes to interact with a client computer browser as disclosed by Merriman, not that the client computer itself would do such processing. There is simply no hint of such disclosure in Merriman.

For at least these reasons Merriman fails to anticipate claim 1. Merriman also fails to anticipate claims 2-3 and 5-12 by virtue of their dependency from claim 1.

Claim 13, as amended, recites corresponding features as those recited in claim 1 and is patentable over Merriman for at least the same reasons. The corresponding features include:

> establishing the assumed frequencies with which subsets of a set of content elements have been viewed by individual users of the communications network environment for subsets of a set of publishers;
> evaluating the assumed frequencies with regard to predetermined frequency targets;
> determining, from within a client computer of an individual user, whether or not the evaluation of the assumed frequencies warrants the delivery of alternate content;
> providing a mechanism for the delivery of the alternate content; and
> updating data stored in a communications network storage device to aid in determinations of whether the alternate content should be shown, wherein the data used in determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of alternate content is stored on a communications network storage device other than in a web browser of the client computer.

One difference in claim 13 when compared with claim 1 is that claim 13 recites "wherein the data used in determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of alternate content is stored on a communications network storage device other than in a web browser of the client computer" instead of being "stored in a web browser of the client computer." This change should not impact the patentability of claim 13 over Merriman. That the cookies or other frequency tracking data is stored on a network storage device other than in a web browser on the client computer recognizes that such data may be located elsewhere than in the web browser. That the determination of whether or not the evaluation of the assumed frequencies warrants the delivery of alternate content is still made "within a client computer of an individual user" still indicates client-side programming approach, which is not disclosed by Merriman.

For at least these reasons, Merriman fails to anticipate claim 13. Merriman also fails to anticipate claims 14-16 and 19-26 by virtue of their dependency from claim 13.

35 U.S.C. § 103 Rejections

Claims 9-10 and 22-23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Merriman in view of U.S. Patent No. 5,937,392 ("Alberts"). As discussed above, Merriman fails to teach all of the features of claims 1 and 13, and Alberts does not teach the features that Merriman does not teach. Accordingly, claims 1 and 13 are patentable over the cited art. Likewise, claims 8-10, which are dependent from claim 1, are patentable over the cited art. Furthermore, claims 21-23, which are dependent from claim 13, are patentable over the cited art.

Claims 9 and 22 each recite

> wherein the mechanism to abort the delivery of the alternate content is triggered from an event selected from the group consisting of:
>
> a. a time delay in the process of determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of the alternate content,
>
> b. a time delay in the delivery of the alternate content,
>
> c. an error in the process of determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of the alternate content, and
>
> d. an error in the delivery of the alternate content.

The Office Action cites to Alberts, column 4, lines 11-26, and column 4, line 63 to column 5, line 28, for disclosing all the features of this claim. These passages, however, are drawn toward making reports of ad serving frequency for advertisers, as well as incorporating purposeful (or predetermined) time delays to keep ratios of frequencies of ads constant. Column 2, lines 15-19 of Alberts states that "[t]he system can predictively model the number of hits to control the distribution of serves, either to ensure even distribution or to concentrate ads during particular times." Nowhere in Alberts is it disclosed to abort serving an ad for any reason, let alone for reasons of delay or error as are recited by claims 9 and 22. Also, the delays of claim 9 and 22 refer to unintended delays. See e.g. pages 12 and 13 of the application.

Furthermore, Alberts makes no mention of reacting to error in either "the process of determining whether or not the frequency evaluation of the assumed frequencies with regard to predetermined frequency targets warrants the delivery of the alternate content," or "in the delivery of the alternate content." For at least these additional reasons, claims 9 and 22 are patentable over the cited art.

Claims 10 and 23 each recite that "the alternate content is not delivered." The Office Action cites to Alberts, column 5, lines 29-40 and Figure 6A for disclosing this feature. This passage, however, is an extension of the above discussion that focuses on ad rotation control, e.g., delaying serving some ads while other ads are being displayed so as to control the distribution of serves. If anything, this passage teaches away from not delivering alternate content because in each case, as planned, primary content of each ad is served at predetermined time intervals, and where alternate content is never served. For at least these additional reasons, claims 10 and 23 are patentable over the cited art.

With this response, the application is believed to be in condition for allowance. Should the examiner deem a telephone conference to be of assistance in advancing the application to allowance, the examiner is invited to call the undersigned attorney at the below telephone number.

Respectfully submitted,

/Nathan O. Greene/
Nathan O. Greene
Registration No. 56,956
Attorney for Applicants

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BRINKS HOFER GILSON & LIONE
405 South Main Street, Suite 800
Salt Lake City, Utah 84111-3400
(801) 355-7900